

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

May 1, 2008

A meeting of the Board of Environmental Protection was held on Thursday, May 1, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Ernest Hilton, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, Ernest Hilton, M. Wing Goodale, Richard Gould, Susan Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Nancy Ziegler.

Absent: Don Guimond

<u>Staff:</u>	Bureau of Land and Water Quality	Thomas Danielson
	Bureau of Land and Water Quality	David Courtemanch
	Bureau of Land and Water Quality	Jennifer Cayer
	Bureau of Air Quality	Andrea Lani
	Bureau of Air Quality	Eric Kennedy
	Bureau of Air Quality	Mike Karagiannes
	Bureau of Air Quality	James Brooks
	Office of the Secretary of State	Don Wismer

Others: David P. Littell, Commissioner
Cindy Bertocci, BEP Executive Analyst
Nancy Macirowski, Assistant Attorney General
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 3:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner David Littell reported the following:

Corporate Average Fuel Economy (CAFÉ) Standards: President Bush announced support of an increase to the CAFÉ standards to promote fuel economy. The Department discovered that the rules include a pre-emption of the California greenhouse car standards. As a result, Maine will join with twelve (12) other states to object to the pre-emption.

Electronic Industry Petition: The Commissioner informed Board members of a petition by the American Electronics Industry Association that seeks to limit a state's ability to regulate hazardous waste through laws/rules that may be more stringent than the federal minimum. Maine believes that this action would be in direct contradiction to the provisions of the federal Resource Conservation and Recovery Act. If this petition is successful, the exemption of certain provisions of Maine's universal waste rules would eliminate the ability to track the disposal of up to 50% of the electronic wastes currently transported within Maine. The universal waste rules are critical to our electronic waste recycling program. The U.S. Department of Transportation recently published a notice of intent to consider the merits of the petition filed by the electronics industry.

Fort Kent Flooding: The Department's response division is busy working on clean-up sites resulting from spills associated with the flood waters in the Fort Kent area. Currently, four wastewater treatment plants are bypassing effluent; one of those plants lost two 500 gallon oil tanks to the river. The Department anticipates additional clean-up work resulting from home owner oil tank damage because of the flooding.

Office of Innovation and Outreach: The Department's Director of Innovation and Outreach, Suzanne Watson, has accepted a new job in Washington D.C. working for a non-governmental organization "American Council for an Energy Efficiency Economy". Ms. Watson coordinated the recent Energy Efficiency Summit for Governor Baldacci and has revamped the Department's step-up-program into a much recognized environmental leadership program gaining larger public awareness.

Questions:

Board member Andrews Nixon asked why the Department has phased out the environmental leadership program for gasoline stations, noting its success.

Commissioner Littell explained that the environmental leadership program was part of a limited funding environmental results project and the funding expired. He also noted that the 5 employees in the Office of Innovation and Outreach are tasked to implement the Toxic Use Reduction Act, the environmental results project, the Governor's carbon challenge, act as the designee for the small business assistance center under the Clean Air Act, and implement the green business program (e.g. green hotels, green Inns). The Department will provide a program information session for the Board at a future regular meeting.

Board member Ernest Hilton asked about the source of funding for clean-up in response to the Fort Kent spring flood waters.

Commissioner Littell explained that the Surface Oil Clean-up Fund will be used for clean-up costs – noting that the fund is healthier than the Ground Water Fund.

BEP Jurisdiction: The Department received the following requests for Board jurisdiction and concluded that they do not meet the criteria for BEP licensing oversight.

Stockton Springs – RV Park: public concern associated with impacts from increased stormwater runoff, changes in scenic character and increased noise levels. The application was submitted on February 25, 2008 and accepted for processing on March 17, 2008. The Department will review the application for compliance with the Stormwater Management Law. The scenic and noise concerns are not applicable because of the size and location of the development.

Additionally, the Department has received early communication from the public on two projects: a proposed project by Maine Turnpike Authority to reconstruct the York Toll Plaza, and the development of a residential subdivision and golf course abutting Acadia National Park. It is likely that public hearing requests or requests for Board Jurisdiction may be received on these projects. The Commissioner noted that no applications have been submitted at this time.

B. COMMENTS FROM THE BEP CHAIR:

C. EXECUTIVE ANALYST COMMENTS:

Ms. Bertocci discussed arrangements for site visits in May and June to the Lockwood hydropower project in Waterville and to two wind power projects / Stetson Ridge in Washington County and Mars Hill in Aroostook County. Stetson Ridge would be a tour of a project under construction and Mars Hill would be a view of a completed project. The company could host the Board on the week of May 26th. Interested Board members should communicate their ability to participate soon.

- D. **BOARD CALENDAR:** Reviewed
- E. **DEPARTMENTAL ORDERS:** Reviewed
- F. **EXECUTIVE SESSION:** None

II **CONSENT AGENDA ITEMS**

Board voted (9-0-0-1) on a motion to approve consent agenda items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, as presented with the exception of the following modification to item 3 Wal-Mart Real Estate Trust et al.:

[Page 3 - Section B.] By failing to gain approval of ~~submit~~ a site specific erosion...

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Sue Lessard, Lissa Widoff, P. Andrews Nixon, Matt Scott and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

Board voted (8-0-1-1) to approve consent agenda number 13 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Sue Lessard, Lissa Widoff, Matt Scott and Nancy Ziegler voted to support the motion. Board member P. Andrews Nixon recused. Board member Don Guimond was absent.

1. LINCOLN PAPER AND TISSUE, LLC, Lincoln – Administrative Consent Agreement (BAQ)
2. TOWN OF FRANKFORT, Frankfort - Administrative Consent Agreement (BLWQ-Water)
3. WAL-MART REAL ESTATE BUSINESS TRUST / WAL-MART STORES, INC and KONOVER CONSTRUCTION CORP, Scarborough - Administrative Consent Agreement and Enforcement Order (BLWQ-Water)
4. LEWISTON - AUBURN WATER POLLUTION CONTROL AUTHORITY, Lewiston – Administrative Consent Agreement and Enforcement Order (BLWQ-Water)
5. DOUGLAS LAVALLEE AND COLLEEN LAVALLEE, Bowdoin - Administrative Consent Agreement (BLWQ-Land)
6. GOLDMARK LLC, Sanford – Administrative Consent Agreement (BLWQ – Land)
7. STROUTS POINT WHARF COMPANY, Freeport – Administrative Consent Agreement (BLWQ – Land)
8. LUPO CONSTRUCTION, INC., Etna – Administrative Consent Agreement (BLWQ – Land)
9. PACKARD DEVELOPMENT LLC and ALVIN J. COLEMAN AND SON, INC., Biddeford – Administrative Consent Agreement (BLWQ – Land)
10. REGINA PROPERTIES LLC and DANNIE DAVIDSON and KEY AUTOMOTIVE, INC., Kittery - Administrative Consent Agreement (BRWM)
11. ESTES OIL BURNER SERVICE, INC, Ogunquit - Administrative Consent Agreement (BRWM)
12. ASSOCIATED HEALTH RESOURCES, INC., Pittsfield - Administrative Consent Agreement (BRWM)
13. WEBBER TANKS INC., Bucksport – Administrative Consent Agreement (BRWM)

III. Regular Agenda

WORKSHOPS: Informational workshops were held on rulemaking, and nutrient criteria for freshwater and marine waters. Board members received information concerning the rulemaking process which included rule development, the steps to adoption, and determination of effective date. In addition the Board heard presentations from Department staff on the development of nutrient criteria to assess freshwater and marine water quality.

- RULEMAKING OVERVIEW (DON WISMER, SECRETARY OF STATE'S OFFICE)
- NUTRIENT CRITERIA FOR FRESHWATER (THOMAS DANIELSON)
- NUTRIENT CRITERIA FOR MARINE WATERS (DAVID COURTEMANCH)

1. CHAPTER 1292 MUNICIPALITY OF CARTHAGE –Amendments to State Imposed Shoreland Zoning Map (Post to 30-day written public comment)

Staff: Jennifer Cayer, Bureau of Land and Water Quality

The Board voted (9-0-0-1) on a motion to post amendments to Chapter 1292, State Imposed Shoreland Zoning Map – Municipality of Carthage to a 30-day written public comment period to obtain public input concerning the request to rezone land surrounding Podunk Pond to a Limited Residential District. The area of the proposed amendment is currently zoned as a Resource Protection District. The Board voted pursuant to 38 M.R.S.A. Sections 341-D(1-B) and 438-A(4).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Susan Lessard, P. Andrews Nixon, Lissa Widoff, Matt Scott and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

THE BOARD RECONVENED AT 1:00 FOR CONSIDERATION OF THE REMAINDER OF THE AGENDA

2. CHAPTER 156, CO₂ BUDGET TRADING PROGRAM / amendments (post to public hearing) -- Staff: Andrea Lani, Bureau of Air Quality

The Board voted (9-0-0-1) on a motion to post to public hearing the proposed amendments to Chapter 156, CO₂ Budget Trading Program that: (1) clarify the Department's authority to initiate air emission licensing of CO₂ budget units and participate in auctions; (2) modify definitions of "fossil fuel-fired unit" and "owner"; and, (3) add a voluntary renewable energy market set-aside provision. A June 5, 2008 public hearing is anticipated. The Board voted pursuant to 38 M.R.S.A. Sections 341-D(1-B), 585-A and LD 1945.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Susan Lessard, P. Andrews Nixon, Lissa Widoff, Matt Scott and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

3. CHAPTER 157, CO₂ BUDGET TRADING PROGRAM WAIVER AND SUSPENSION / NEW – Major substantive (final adoption) -- Staff: Andrea Lani, Bureau of Air Quality

The Board voted (6-0-3-1) on a motion to adopt Chapter 157, CO₂ Budget Trading Program Waiver and Suspension as presented which authorizes the Commissioner to waive or suspend requirements (for up to one-year) of the CO₂ Budget Trading Program in emergency situations [06-096 CMR Chapter 156]. The vote was taken pursuant to 38 M.R.S. A. Sections 341-D(1-B) and 585-A and PL 2007 c. 317 and LD 2164.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Susan Lessard and Nancy Ziegler voted to support the motion. Board members P. Andrews Nixon, Lissa Widoff and Matt Scott recused. Board member Don Guimond was absent.

4. CHAPTER 158, CO₂ BUDGET TRADING PROGRAM AUCTION PROVISIONS / NEW – Major substantive (post to public hearing) -- Staff: Andrea Lani, Eric Kennedy and Mike Karagiannes, Bureau of Air Quality

The Board voted (9-0-0-1) on a motion to post to hearing Chapter 158, CO₂ Budget Trading Program Auction Provisions as presented which provides for the administration and implementation of the Department's CO₂ allowance auctions. This rule supports the carbon dioxide cap-and-trade program by establishing a system for the sale of emission allowances in coordination with other states and jurisdictions in the regional greenhouse gas initiative. [06-096 CMR Chapter 156]. A June 5, 2008, public hearing is anticipated. The vote was taken pursuant to 38 M.R.S. A. Sections 341-D(1-B) and 585-A and 580-B(4).

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, Susan Lessard, P. Andrews Nixon, Lissa Widoff, Matt Scott and Nancy Ziegler voted to support the motion. Board member Don Guimond was absent.

Next Regular Meeting –Thursday, May 15, 2008 – Holiday Inn / Ground Round